of transportation; but the relief granted cannot be based upon the contract or a breach thereof, but as a substituted medium of payment. *L. & N. R. R. Co.* v. *Crowe* (Ky.), 160 S. W. 759. See NOTES, p. 561.

CONTRACTS—VALIDITY—CUSTODY OF CHILD.—A divorcee entered into a contract with her father-in-law whereby she turned over the custody and control of her child to him in consideration whereof he agreed to care for and educate the child and to pay to the mother during her life a sum of money in the nature of an annuity sufficient to support her. *Held,* the contract is not void as against public policy and the mother can recover her arrears of annuity. *Clark* v. *Clark* (Md.), 89 Atl. 405.

An agreement whereby a parent divests himself of the custody and control of his child is generally held void as against public policy. *People* v. *Mercein,* 3 Hill (N. Y.) 399, 38 Am. Dec. 644; *Weir* v. *Marley,* 99 Mo. 484, 6 L. R. A. 672; SPENCER, DOM. REL., 436. But this rule is subject to the qualification that the welfare of the child is of primary importance. *Bonnett* v. *Bonnett,* 61 Ia. 198, 47 Am. Rep. 810; *Carpenter* v. *Carpenter,* 149 Mich. 138, 112 N. W. 748; *State* v. *Porter,* 78 Neb. 811, 112 N. W. 286. Unless such contract is contrary to some constitution or statute, the only public policy it could contravene is sound policy and good morals. *Trist* v. *Child,* 21 Wall. (U. S.) 441; *McCowen* v. *Pew,* 153 Cal. 735, 96 Pac. 893. Where the contract is between members of the same family, as in the principal case, and is beneficial to the child as well as to the parent, it is difficult to see how it could be contrary to any rule of policy or code of morals. On the contrary, sound policy and good morals should demand the upholding of such contract whereby both the parties in interest and the state are benefited. Such contracts are not void as against public policy; and, being valid, are enforceable *in solido. Enders* v. *Enders,* 164 Pa. St. 266, 30 Atl. 129, 44 Am. St. Rep. 598, 27 L. R. A. 56; *Crisholm* v. *Chisholm,* 40 Can. Sup. Ct. 115, 11 A. & E. Ann. Cas. 213.

CRIMINAL LAW—VENUE—BRINGING STOLEN PROPERTY INTO A STATE.—The defendant was charged with stealing property in one state and bringing it into another. *Held,* he is guilty of larceny in the latter state. *Hobbs* v. *Commonwealth* (Ky.), 162 S. W. 104.

It seems settled that a person stealing an article in one county and bringing it into another in the same state may be convicted of larceny in the latter county. By a legal fiction of the common law each moments retention is considered as a fresh asportation. *Commonwealth* v. *Cousins,* 2 Leigh (Va.) 708; *Commonwealth* v. *Hayes,* 140 Mass. 366, 5 N. E. 264. A number of the states have statutes declaratory of the common law rule. *Kidd* v. *State,* 83 Ala. 58, 3 So. 442; *Green* v. *State,* 114 Ga. 918, 41 S. E. 55. But when the crime is a compound larceny such as burglary it cannot be tried in the latter county because all of the necessary elements are not present. *Gage* v. *State,* 22 Tex. Crim. App. 123, 2 S. W. 638.

When larceny is committed and the stolen property is taken into another state a more difficult question arises and one on which the au-

thorities are in conflict. Some authorities hold that the same rule applies to this case that applies to the case where the larceny was in one county and the indictment in another, both counties being in the same state. *State* v. *Bartlett,* 11 Vt. 650; *Worthington* v. *State,* 58 Md. 403, 42 Am. Rep. 388; 1 BISHOP, CRIM. LAW, 8 ed., 76. Other cases hold that the accused can be indicted only in the state in which the crime was committed. *People* v. *Schenck,* 2 Johns. (N. Y.) 479; *Lee* v. *State,* 64 Ga. 203, 37 Am. Rep. 67; *Strouther* v. *Cone,* 92 Va. 789, 22 S. E. 852. A distinction has sometimes been made when the property was stolen in one state and carried into another, and when it was stolen in a foreign country and brought into one of the states. Thus it was held that one who stole goods in a foreign country and brought them into Massachusetts was not guilty of larceny there. *Commonwealth* v. *Uprichard,* 3 Gray (Mass.) 434, 63 Am. Dec. 762. But there is authority to the contrary. *People* v. *Burk,* 11 Wend. (N. Y.) 129.

In the case where larceny is committed in one state and the goods are taken into another the weight of authority seems to support the principal case, but there is much conflict and the better rule would seem to be to deny the courts of the state into which the goods have been taken the right to punish the thief, because he is certainly guilty and liable to punishment in the state in which he committed the larceny, and it seems unjust to follow a rule by which a single crime may be punished twice. The rule against double jeopardy which prevents more than one punishment in the same state does not apply as between two states. MINOR, CONFL. LAWS, 503.

EMINENT DOMAIN—DE FACTO CORPORATIONS.—The state applied for an injunction to stay condemnation proceedings on the ground that the defendant was not a corporation *de jure. Held,* a *de facto* corporate existence is sufficient to give the right of eminent domain. *Roaring Springs Townsite Co.* v. *Paducah Telephone Co.* (Tex.), 164 S. W. 50.

This is the rule adopted by the majority of the courts. *Oregon, etc., R. R. Co.* v. *Postal Tel. Co.,* 49 C. C. A. 663, 111 Fed. 842; *Central Ry. Co.* v. *Union Springs Ry. Co.,* 144 Ala. 639, 39 So. 473. But as the power to exercise the right of eminent domain must be expressly given by legislative authority, if the enabling statute gives the right only to legally incorporated corporations, then a *de jure* existence is essential in order to exercise the right. See MORAWETZ, PRIV. CORP., § 768. Total lack of corporate existence can be shown as a defense to eminent domain proceedings. *Atkinson* v. *Marietta R. R. Co.,* 15 Ohio St. 21; *Kingston R. R. Co.* v. *Stroud,* 132 N. C. 413, 43 S. E. 913. But a failure to perform a condition subsequent cannot be shown in defense by the owner of the land to be condemned, since the corporate existence continues until destroyed by the state in direct proceedings. *Briggs* v. *Cape Cod Co.,* 137 Mass. 71; *Cluthe* v. *Evansville, etc., Ry. Co.,* 176 Ind. 162, 95 N. E. 543. *Contra,* where nonperformance of the condition destroys the corporate existence *ex proprio vigore. Re Brooklyn, etc., Co.,* 125 N. Y. 434 (*dictum*). It has been held that the expiration of the corporate charter cannot be shown collaterally, thus relegating the applicant for